

**Exhibit 4**

# **Exhibit 4**

1 Pages 1-91

2 Exhibits 1-2

3  
4 IN THE UNITED STATES DISTRICT COURT  
5 FOR THE DISTRICT OF MASSACHUSETTS  
6 C.A. No. 1:20-cv-10002

7  
8 \*\*\*\*\*  
9 Emily Forsythe,

10 Plaintiff

11 vs.

12 Wayfair, LLC,

13 Defendant

14 \*\*\*\*\*  
15  
16 Videotaped Deposition of Kory McKnight  
17 Tuesday, July 21, 2020

18 Via Videoconference

19  
20 -----Kristen C. Krakofsky-----

21 Court Reporter

22 VERITEXT

23 (800) 227-8440

<p>1 employee because that's where she started and she 2 had a desk there?</p> <p>3 A. Yes. I mean, Emily lived, I believe, in 4 Kentucky, similar situation. She was originally, I 5 believe, in Boston and relocated to the Kentucky 6 area.</p> <p>7 Q. And were you also similarly working out of 8 Boston?</p> <p>9 A. Sorry. Can you repeat that?</p> <p>10 Q. Were you also -- were you similarly working 11 out of Boston at some point or at the beginning?</p> <p>12 A. Yes.</p> <p>13 Q. What was your first day at Wayfair?</p> <p>14 A. July 29th.</p> <p>15 Q. Of last year; right?</p> <p>16 A. Of 2019, sorry. Last year, 2019.</p> <p>17 Q. And were you working in Boston at some 18 point beginning in July?</p> <p>19 A. No.</p> <p>20 Q. Okay. So you've never actually -- do you 21 have a desk in Boston?</p> <p>22 A. I do not.</p> <p>23 Q. So you may have misunderstood my question. 24 You've never worked out of Boston? You never -- 25 (Multiple parties speaking.</p>	<p>1 Jet, so by default I became a Walmart.com employee 2 through Jet.com.</p> <p>3 Q. And I see you were at Jet.com from 4 October '16 to June 2019. Correct?</p> <p>5 A. Correct.</p> <p>6 Q. And when did Walmart purchase Jet.com?</p> <p>7 A. They purchased Jet.com -- well, it was 8 officially approved by the SEC in September of 2016.</p> <p>9 Q. And what were you doing with Jet.com?</p> <p>10 A. I was a senior director managing a team of 11 design engineers and project managers managing 12 pretty much all of the network equipment, all the 13 automation equipment across Walmart.com and Jet.com 14 fulfillment centers.</p> <p>15 Q. Was that, again, warehousing distribution 16 and fulfillment?</p> <p>17 A. And automation, yes, exactly.</p> <p>18 Q. Okay. And when you talk about automation, 19 what are you talking about?</p> <p>20 A. I'm talking specifically about carton 21 sortation, conveyance and sortation, moving product 22 from -- inbound, through the warehouse to put away, 23 from picking to shipping and sortation.</p> <p>24 Q. So you call it sortation, not sorting, huh?</p> <p>25 A. It's sortation, yeah. Sorters are the</p>
<p>Page 6</p> <p>1 Interruption by the court reporter.)</p> <p>2 MR. GOODMAN: I'll restate the 3 question.</p> <p>4 MR. GOODMAN:</p> <p>5 Q. Mr. McKnight, you've really never lived in 6 Boston. You've never actually worked in Boston. 7 You traveled from Boston to work for Wayfair; 8 correct?</p> <p>9 A. I've worked -- you know, meetings, you 10 know, spent some time there, but I've never owned an 11 apartment in Boston.</p> <p>12 Q. Okay. How old are you today?</p> <p>13 MS. KAPPELMAN: What's the question, 14 Bob? We can't really hear you very well.</p> <p>15 BY MR. GOODMAN:</p> <p>16 Q. How old are you, Mr. McKnight?</p> <p>17 A. I am 50.</p> <p>18 Q. Who is your immediate prior employer?</p> <p>19 A. Jet.com.</p> <p>20 Q. What does Jet.com do?</p> <p>21 A. They're an e-commerce player, just like 22 Amazon. They compete with Amazon.</p> <p>23 Q. They sell furnishings?</p> <p>24 A. Online, a variety of -- predominantly 25 grocery. But, you know, Walmart.com had purchased</p>	<p>Page 8</p> <p>1 physical devices that move product down certain 2 lanes, but it's sortation in general, is the term.</p> <p>3 Q. And you did that also at C&amp;S Wholesale 4 Grocers; correct?</p> <p>5 A. Yes.</p> <p>6 Q. And for about six months, you worked at 7 Tesla; correct?</p> <p>8 A. Yes.</p> <p>9 Q. That was not a similar role, obviously.</p> <p>10 What did you do at Tesla?</p> <p>11 A. No. At Tesla I was a program manager for 12 the Model 3.</p> <p>13 Q. And what did you do at United Technologies?</p> <p>14 A. I was a program manager in electric systems 15 on the commercial business side.</p> <p>16 Q. What kind of product?</p> <p>17 A. Power distribution systems. Secondary and 18 primary power distribution.</p> <p>19 Q. Under what circumstances did you leave 20 Walmart?</p> <p>21 A. I left Walmart to join Wayfair last year, 22 just about this time.</p> <p>23 Q. Were there any complaints against you at 24 Walmart?</p> <p>25 A. No.</p>

<p>1 Q. What prompted your leaving Walmart?  2 A. Sorry?  3 Q. What prompted your leaving Walmart?  4 A. I'm sorry. I didn't get that.  5 Q. What prompted your leaving Walmart?  6 A. My interest in Wayfair. And I started  7 talking to Wayfair in March or -- I think late March  8 of 2019. Just interested in the growth opportunity.  9 It's exciting. It kind of reminded me of what Jet  10 was like when I started.  11 Q. Was there anything critical in your  12 employment at Wayfair that led you to -- issues at  13 Walmart that led you to need to leave or want to  14 leave?  15 A. At Walmart?  16 Q. Yeah. Was there any criticism of any  17 aspect of your performance that led you to need to  18 leave or want to leave Walmart?  19 A. No. I left for Wayfair because it was a  20 great opportunity.  21 Q. You gave some Walmart documents to Emily  22 Forsythe; correct?  23 A. I'm not sure what document you're referring  24 to.  25 Q. Yeah. There were some documents that</p>	<p>1 Q. You resigned without a severance?  2 A. That's correct.  3 Q. And it's your testimony that there were no  4 complaints about you or against you at Walmart when  5 you were there?  6 MS. KAPPELMAN: Object to the form of  7 the question.  8 You can answer.  9 A. No.  10 Q. When did you first encounter Emily  11 Forsythe?  12 A. I met Emily for the first time on  13 August the 5th of 2019, which was the week after I  14 started.  15 Q. Is that when you -- that's when you met  16 her, you said?  17 A. Yes.  18 Q. Did you tell her how much money you made  19 the day you first met her?  20 A. No.  21 Q. Did you tell Emily that you would leave  22 Wayfair if the stock price dropped?  23 A. No.  24 Q. You're denying saying both of those things  25 or either of those things?</p>
<p>Page 10</p> <p>1 related to Walmart that you asked her to -- you sent  2 to her, and you asked her to keep them confidential.  3 Do you recall those documents?  4 A. So there's probably two documents. One was  5 just a risk document, and the other one was an  6 action tracker. Those were my documents that -- I  7 had developed those myself prior to Walmart.  8 Q. Action tracker and what was the other one?  9 A. Risk register.  10 Q. R-I-S-K register?  11 A. Yes. And those were documents that I had  12 developed before.  13 Q. Okay. And are you -- are you sure that  14 those were documents you sent to Emily, or are you  15 speculating those were the documents?  16 A. Those are documents I shared with my  17 implementation team since as well, so I believe  18 those are the documents.  19 Q. Do you remember sending any other documents  20 besides those two to Emily or to anybody else at  21 Wayfair?  22 A. No, I don't recall if there was something  23 else.  24 Q. So did you then resign from Walmart?  25 A. Yes.</p>	<p>Page 12</p> <p>1 MS. KAPPELMAN: Asked and answered.  2 You can answer again, Kory.  3 A. Yes, I deny that.  4 Q. Did you ask her the first time you met her  5 how much she made?  6 A. No.  7 I would have access to that anyway.  8 Q. And what level she was at?  9 A. She was a Level 5.  10 And I have access to that through Workday,  11 so I would never ask anyone what I -- information  12 that I'm privy to already.  13 Q. And your testimony is that she was a  14 Level 5 on the day you met her?  15 A. Yes. Until the day she resigned.  16 Q. Did you discuss with her possibly needing  17 her spot for somebody else?  18 A. No.  19 Q. You disclosed that you had three coworkers  20 from Walmart that may be interested in Wayfair on  21 the day you met her. You told that to her, didn't  22 you?  23 A. I told her that I had one that was  24 interested that I was talking to.  25 And so when I came on board, there was a</p>

1 ton of opportunity. We were hiring. We had a  
2 number of open roles, and I was basically told to  
3 hire people that I know, references that I  
4 personally worked with.

5 And when I met with Emily the second day,  
6 we were together in Fort Wentworth. And we started  
7 talking about the team and the workload, and I  
8 mentioned to her that I knew someone that could be a  
9 good fit for the team.

10 Q. And who was that?

11 A. That was Mike Thayer.

12 Q. And he's since come on; correct?

13 A. He came on after Emily had left the  
14 company.

15 Q. Okay. But you actually mentioned two  
16 people to her when you first met with her.

17 MS. KAPPELMAN: Object to the form of  
18 the question.

19 You can answer, Kory.

20 A. Yeah. Mike is the only one that I brought  
21 in that we interviewed, and he made it through the  
22 interview process.

23 There were -- there was a candidate that  
24 came later as an engineer. He came through the  
25 process, wanted too much money. This was later on,

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1 Q. So when she says you mentioned three people  
2 at Walmart who might want to come over to Wayfair,  
3 you're saying she's lying about that?

4 A. I'm saying I mentioned one person, and I  
5 shared that resume with her.

6 She actually was -- she was a little put  
7 off with the fact that he didn't go to a school that  
8 she recognized, although he had 20-plus years' of  
9 work experience, which I thought was a little bit  
10 strange, but I just let that go.

11 Q. Okay. So she looked at his resume at the  
12 time you handed it to her?

13 A. Yes.

14 Q. And then you had a discussion about that  
15 resume at the time?

16 A. I did, yeah. She made some comments that  
17 she didn't recognize the school. And I didn't think  
18 it was very applicable, but we never debated it,  
19 discussed it at that point.

20 Q. Did you recognize the school?

21 A. Bishop University.

22 I mean, I'm originally from Canada, so I  
23 wouldn't recognize a lot of schools, other than the  
24 most popular schools here.

25 Q. You're thinking it was in Canada?

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1 after Emily had left the company as well, and we  
2 never extended -- we never met his expectations.

3 Q. Who was that?

4 A. This was Jon Cortellacci.

5 Q. Okay. Is that another person you talked  
6 with her about?

7 A. No, I never spoke to her about Jon.

8 Q. You're saying you spoke to her about  
9 Thayer. Did you --

10 A. Yes.

11 Q. Did you identify by name or as one of the  
12 three male coworkers anybody else besides Thayer?

13 MS. KAPPELMAN: Object to the form of  
14 the question. Object to the form of the question.

15 Mischaracterizes his prior testimony. He didn't say  
16 he identified three people in that conversation. He  
17 said he identified one.

18 You can answer, Kory.

19 BY MR. GOODMAN:

20 Q. Did you identify Mr. Thayer by name?

21 A. I did. In fact, I shared his resume with  
22 Emily as well.

23 Q. Did you identify anybody else either by  
24 name or as coworkers of Walmart?

25 A. I did not.

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1 A. Sorry. Can you repeat that?

2 Q. You think it was in Canada?

3 A. No, no, no. I said I'm originally from  
4 Canada, and I wouldn't recognize many of the U.S.  
5 schools, as not being born here and not spending,  
6 you know, the first 26, 29 years of my life here,  
7 so...

8 Q. So you didn't recognize it either?

9 A. I did not, no.

10 And I knew -- I only knew Mike, actually,  
11 for a short amount of time before that. But he was  
12 interested, and I had spoken to him about coming  
13 over to Wayfair.

14 Q. Did you talk with Emily in September of  
15 2019 about having had a female person on a team in  
16 one of your jobs who had complained and then later  
17 resigned?

18 A. No.

19 Q. So you never talked with Emily Forsythe  
20 about a female employee on one of your teams at one  
21 of your employers?

22 A. I don't recall, no. If I -- I may have  
23 spoken to her about some team members in the past,  
24 but I don't recall that specifically.

25 Q. Do you recall -- did you speak with Emily

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5 (Pages 14 - 17)

<p>1 about a team member -- a female team member under  2 you at some point who complained and then resigning?  3 A. No.  4 Q. In your position as a supervisor at various  5 companies, was there anybody besides Emily who made  6 a complaint of sexual harassment?  7 MS. KAPPELMAN: Against Kory or  8 against anyone?  9 BY MR. GOODMAN:  10 Q. Against someone at the company that you  11 had -- as supervisor, you had a responsibility.  12 A. No, never. Not in my 25 years of working.  13 I've never been involved in a sexual harassment case  14 of any kind.  15 Q. Until Emily's; right?  16 A. Correct.  17 Q. Have you been involved with any others  18 since?  19 MS. KAPPELMAN: Object to the form of  20 the question.  21 I'm going to direct you not to answer  22 as it's not relevant to this case.  23 BY MR. GOODMAN:  24 Q. Do you, at work, refer to women from time  25 to time as girls?</p>	<p>1 about -- formally complain about anything, whether  2 or not it was sexual discrimination or sexual  3 harassment?  4 MS. KAPPELMAN: I'm going to object to  5 the form.  6 Can I just make it clear? Are you  7 asking if he's ever had a female subordinate who  8 complained about anything?  9 MR. GOODMAN: No.  10 MS. KAPPELMAN: Okay. Then I must not  11 have understood the question. Can you rephrase it?  12 BY MR. GOODMAN:  13 Q. Yeah. The statement that's attributed to  14 you made a big deal complaining about something --  15 have you ever had, prior to Emily, a female  16 subordinate who made a big deal complaining about  17 something to you?  18 A. No.  19 Q. Did you have a conversation -- do you  20 recall the conversation on September 10, 2019, with  21 Emily?  22 MS. KAPPELMAN: What conversation,  23 Bob? Any conversation on September 10, 2019?  24 BY MR. GOODMAN:  25 Q. Do you recall a conversation on</p>
<p>Page 18</p> <p>1 A. I refer to people as associates,  2 colleagues, employees. I believe that would be --  3 no. That would be like me referring to our  4 associates as boys.  5 Q. I'll share the recollection with you, and  6 you can either acknowledge or -- admit or deny this.  7 A. Sure.  8 Q. Emily recalls that you said, "I used to  9 have a girl like you on my team, but she made a big  10 deal complaining. And you know what happened to  11 her? She resigned."  12 A. That is not something that I said. That  13 just seems a little absurd to me, but okay. I have  14 not said that, no.  15 Q. What's absurd about it?  16 A. To what end would I be -- what is the  17 benefit to me if -- by making a statement like that?  18 I just -- I don't understand that, so -- that's not  19 something I would say.  20 Q. Prior to August 10, 2019, had you ever had  21 a female subordinate who complained about  22 anything -- about any discrimination, even if it was  23 not a complaint of sexual harassment?  24 A. No.  25 Q. Have you had a female subordinate complain</p>	<p>Page 20</p> <p>1 September 10, 2019, with Emily? Yes or no?  2 MS. KAPPELMAN: Kory, do you recall a  3 specific conversation that's tied to September 10,  4 2019?  5 A. No, no. I've had many conversations with  6 Emily, so I'm not sure which one you're referring  7 to.  8 Q. Well, there was one that she made a record  9 of in an email to you and Mr. Witte; correct?  10 A. That was not -- I believe that was  11 September the 17th.  12 Q. Okay. And so you do recall September 17th.  13 You just don't, as we sit here, recall  14 September 10th; correct?  15 A. Correct. I remember September 17th because  16 she had sent a document that was her attempt to  17 restate the conversation.  18 Q. Did you ever respond to that email in  19 writing?  20 A. I do not believe I did, no.  21 I did speak to Matt. He was in the room  22 adjacent to me. This was the last conversation I  23 believe I had with Emily.  24 Q. Can you see that email on your screen?  25 A. Yes, I can.</p>

1 Q. The email that is marked Wayfair -- that is  
 2 Wayfair 1265 to 1266, which I'll mark as McKnight  
 3 Exhibit 1, that's the email you were talking about;  
 4 correct?

5 (McKnight Exhibit 1, email dated  
 6 September 17, 2019, from Ms. Forsythe to  
 7 Mr. McKnight and Mr. Witte, Bates-stamped Wayfair  
 8 1265 to 1266, marked for identification.)

9 MS. KAPPELMAN: Just -- can you go to  
 10 the top for me for one minute, Bob?

11 For the record, it's a September 17,  
 12 2019, email from Emily Forsythe to Kory McKnight and  
 13 Matt Witte.

14 BY MR. GOODMAN:

15 Q. That's the one you were just identifying;  
 16 correct?

17 A. Yes, it is.

18 Q. And you never addressed this in writing  
 19 with her?

20 A. She's the one that sent it to me, so --

21 Q. You never responded to her or refuted it?

22 A. No. I spoke to Matt immediately after  
 23 this. He was in the room adjacent when she came in  
 24 and attacked me verbally and accused me of keeping  
 25 her uninformed and talking to her team members after

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1 Thayer actually -- you know, his name was actually  
 2 even mentioned, to be honest.

3 Q. Okay.

4 A. He was looking at --

5 MR. GOODMAN: Object to  
 6 responsiveness.

7 BY MR. GOODMAN:

8 Q. This email records a discussion with you  
 9 that, in large part, dealt with her concerns that  
 10 you were bypassing her improperly; correct?

11 MS. KAPPELMAN: Objection. The  
 12 document speaks for itself as to what it records.

13 But you can reflect your recollection.

14 A. Yeah. I mean, so the interesting thing  
 15 about this is I had followed up with her -- one of  
 16 her project managers regarding a schedule that Emily  
 17 was not willing to share with the site director. I  
 18 was understanding the details that she was working  
 19 on in terms of the absolute dates.

20 I ran into one of her other project  
 21 managers on-site in Erlanger for the first time, and  
 22 he took me on a short tour of that site. That was  
 23 not planned.

24 When Emily found out that I was talking to  
 25 Kelly, she was in Hebron at the time, and she asked

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1 we've had multiple discussions around the fact that  
 2 she's busy and I'm going to be talking to vendors  
 3 like I've done in my past and I continue to do today  
 4 as well. If that means I have to speak to her  
 5 teammates directly, that's just -- that's the normal  
 6 part of the business that we're in.

7 Q. And you talk about her concern that you  
 8 were bypassing her and -- you talk about her  
 9 concerns that you were bypassing her; correct?

10 A. She brought that up. She accused me of  
 11 intentionally keeping her out of the loop with her  
 12 teammates.

13 Q. And verbally you had some discussion with  
 14 her about that?

15 A. I had several discussions before where she  
 16 was telling me, "Do not talk to my vendors, do not  
 17 talk to my team members without me directly  
 18 involved."

19 And I explained to her on a few occasions  
 20 that, "I'm sorry, Emily, to disagree with that, but  
 21 this is, you know, how we're going to -- we conduct  
 22 business when things are as busy as they are."

23 That's another reason why we were looking  
 24 to add another team member to the team, to take --  
 25 to split the work into two regions. That's why Mike

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1 that I speak to her in person and basically demanded  
 2 that I, you know, not talk to her team directly.  
 3 And within 10 minutes, she was in Erlanger, which is  
 4 at least a 10-minute drive, knocking on the  
 5 conference room door that I was sitting in. She  
 6 came in and just, you know --

7 Q. And her conversation -- her email records  
 8 that conversation that you just testified to; right?

9 MS. KAPPELMAN: Object to the form.

10 BY MR. GOODMAN:

11 Q. You may disagree with what she said, but  
 12 that was her characterization of that conversation,  
 13 the one where she drove to Erlanger to discuss it;  
 14 correct?

15 A. Yes. This is her version of the --

16 Q. I understand.

17 And then --

18 MS. KAPPELMAN: I'm going to ask, Bob,  
 19 to completely finish his question before you start  
 20 to answer, Kory. And I'm going to ask Kory to  
 21 completely finish your answer before Bob cuts you  
 22 off. That way we'll have a clear transcript, and  
 23 I'll get a chance to object if I need to. Thank  
 24 you.

25

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7 (Pages 22 - 25)

<p>1 BY MR. GOODMAN:</p> <p>2 Q. If you look on the second page of that, 3 there's a paragraph that begins, you changed the 4 subject in that -- "You changed the subject at this 5 point in the conversation." Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And it records some discussion you had 8 about install schedule and Vic, a person named Vic. 9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Who is Vic?</p> <p>12 A. Vic was the regional director for the 13 West Coast.</p> <p>14 Q. What's his last name?</p> <p>15 A. He's no longer with the company.</p> <p>16 MS. KAPPELMAN: If you don't remember, 17 you don't remember.</p> <p>18 A. Davis, I think. Vic Davis.</p> <p>19 Q. All right. In the next to last paragraph, 20 it says, "I then stated you were changing the 21 subject, that this conversation was about how I 22 needed you to not cut me out of my team."</p> <p>23 Is that correct, that at one point she 24 thought -- she brought up this issue of bypassing 25 her and that you had changed the subject? Or she</p>	<p>1 And also, I told her that, you know, we 2 needed to have a sit-down with our talent management 3 team to determine what the next steps were.</p> <p>4 This was -- she completely took me off 5 guard by her -- the way that she, again, I believe, 6 in my view, attacked me and accused me of something 7 that was, quite frankly, not the case. And I -- 8 (Multiple parties speaking.)</p> <p>9 Q. Sorry. Go ahead if you need to.</p> <p>10 Did you ever reduce to writing any 11 criticisms of her from you or others in a 12 communication to her?</p> <p>13 A. So I was having almost daily conversations 14 with my supervisor at the time, just explaining some 15 of the challenges. Matt was also getting calls from 16 other leaders, including the regional directors, on 17 her behavior.</p> <p>18 So I was consulting with Matt quite 19 frequently. We had some communication through email 20 back and forth, just about, you know, getting 21 another person on the team to help with the 22 workload, which I felt could help Emily take some of 23 the stress off and some of the pressure. And that 24 was really the goal of expanding the team and the 25 organization to align with the operation, because</p>
<p>Page 26</p> <p>1 writes that you changed the subject slightly?</p> <p>2 A. So Emily was berating. She was turning 3 red. She berated me. She was completely 4 disrespectful and out of line. I was completely 5 shocked with her approach and accusations. I sat 6 back, quietly listened to her, you know, accuse me 7 of keeping her uninformed. That's when I 8 interjected.</p> <p>9 She has not been forthcoming in terms of 10 sharing information. She's not been collaborative. 11 She's been condescending to many of her peers in 12 many other interactions she had.</p> <p>13 I was really quite shocked at her, how she 14 basically came and attacked me, that I was a little 15 bit taken aback and had to sit and listen to what 16 she was saying before I interjected and brought up a 17 couple of things. You know, one of them being 18 feedback was not positive. Not the first time I had 19 that discussion with her. I had been coaching her 20 for a few weeks.</p> <p>21 And for the record, I only worked with 22 Emily for seven weeks, so it's a very short amount 23 of time that I actually had interaction with her. 24 But I had a lot of challenges with her interactions 25 with others. I brought that up.</p>	<p>Page 28</p> <p>1 they're split into regions. So we were following 2 suit with that approach.</p> <p>3 I thought that would help Emily, but she 4 didn't really take very well to the criticisms and 5 to the coaching, even though we would have many 6 discussions around how she can approach things 7 differently. And she would agree with me, and she 8 would go and do, quite often, the opposite.</p> <p>9 MR. GOODMAN: Object to 10 responsiveness.</p> <p>11 BY MR. GOODMAN:</p> <p>12 Q. My question was whether you had reduced to 13 writing, in any communication with her, your 14 criticisms of her or the criticisms of others.</p> <p>15 MS. KAPPELMAN: Just so you know, 16 Kory, when Bob doesn't like your response, he says, 17 "Object to responsiveness," which means nothing. 18 You'll be able to testify at trial to what you 19 believe and what you know.</p> <p>20 MR. GOODMAN: The judge can decide 21 whether an answer you gave -- if we only use your 22 deposition, the judge can decide whether the jury 23 hears your --</p> <p>24 MS. KAPPELMAN: We're not going to 25 just use his deposition. Kory's going to be there</p>

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8 (Pages 26 - 29)

1 to testify about every decision that was made, and  
2 all of his deposition testimony will come in.

3 So that's why he does that, Kory. But  
4 feel free to keep answering and telling your truth.

5 MR. GOODMAN: Object to sidebar and  
6 coaching.

7 BY MR. GOODMAN:

8 Q. In any case, did you ever reduce to writing  
9 in a communication with Emily your criticisms of  
10 her?

11 A. There could have been coaching  
12 opportunities that were back and forth between her  
13 and I --

14 Q. You don't remember --

15 A. -- which is no different than --

16 MS. KAPPELMAN: Let him finish his  
17 answer.

18 Which is no different than what, Kory?

19 A. It's no different than if someone --  
20 another team member on the team was having some  
21 challenges with people, with interactions, that I  
22 would offer the same level of coaching and  
23 understanding and support.

24 Q. I understand that. But did you put in  
25 writing your criticisms of Emily in a communication

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1 Q. All right. And you understood that she was  
2 under stress with all the work at the time? You've  
3 already indicated that; right?

4 A. I think everybody is under stress when  
5 you're delivering multimillion-dollar projects that  
6 are behind schedule. It's just part of the nature  
7 of the business.

8 Q. And you also understood, as of mid-August,  
9 that she was also under stress because of conduct of  
10 which she complained in her August 14th formal  
11 complaint; correct?

12 A. My involvement in that, the complaint, was  
13 to discuss with Matt the need to escalate it to  
14 talent management. They took the case and did the  
15 investigation. I was completely uninvolved in that.

16 (Multiple parties speaking.)

17 MS. KAPPELMAN: Let him finish,  
18 please, Bob, really, before you interrupt him.

19 Go ahead, Kory.

20 A. I was just going to say that I didn't know  
21 when the case would end. I didn't know the process.  
22 I wasn't asking the questions. I was dealing with  
23 the workload that was in front of us.

24 And Emily seemed to be focused on work. I  
25 didn't get the sense that the case was a major

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1 with her at any time?

2 A. Again, I think what I -- if I put something  
3 in writing, it was, you know, in her best interest.  
4 And I look at that more as a coaching opportunity.

5 Q. And it was -- if you put something in  
6 writing to her, it was the same kind of thing you  
7 would do for any employee; correct?

8 A. If the employee was having the same number  
9 of challenges with interactions with other folks,  
10 absolutely.

11 Q. Okay. Did you, in a written communication  
12 with anybody besides Emily, put your own criticisms  
13 of Emily?

14 A. There was dialogue verbally and in --  
15 between correspondence or email with myself and Matt  
16 that could be construed as criticisms.

17 Q. Okay.

18 A. I'm sure there were. Every day was  
19 bringing new challenges. And, again, I would spend  
20 time having the discussion and the dialogue with  
21 Emily. She tended to be responsive, and she was  
22 understanding of the circumstances. And we would  
23 typically align and agree on next steps and path  
24 forward, and then she would often do the opposite of  
25 what we would discuss.

1 distraction for her.

2 Q. Well, did you -- did you read the 14-page  
3 summary of events?

4 A. 14-page summary of --

5 Q. Did you read the complaint that's --  
6 chronology of events that constitutes the formal  
7 complaint?

8 A. Yes.

9 Q. Okay. And the -- it focused, to some  
10 degree, on the unconsented touching by Mr. McDole  
11 and other conduct of Mr. McDole; correct?

12 A. I read that, yes.

13 Q. And reading it, you understood that there  
14 was stress from that direction in Emily's work life;  
15 correct?

16 A. I can only surmise.

17 Q. Okay. I mean, if that was happening to  
18 you, if you had been touched without your consent  
19 or, in your view, bullied by another employee, that  
20 would put you under some stress, would it not?

21 A. If that were, in fact, true, then I would  
22 agree with that.

23 Q. So you think she -- are you saying that you  
24 think Emily was lying about Mr. McDole touching her  
25 without her consent on the three occasions that were

Page 31

Page 33

9 (Pages 30 - 33)

1 highlighted in that memo?

2 A. I never said that, and I have no opinion of

3 it, other than to escalate that and take her word

4 that the accusations happened. And it was up to the

5 talent management team to investigate it fully.

6 Q. Do you think -- do you think a woman has to

7 have a witness to an incident of unconsented

8 touching or the allegation of unconsented touching

9 to even be regarded as being true?

10 A. I don't.

11 Q. Okay. There's a reference, in looking at

12 the last paragraph of this 1265 document, Exhibit 1;

13 where you ask her to mend things with Frances, the

14 employee named Frances.

15 A. Yeah. She had an altercation with Frances

16 dating back to August the 27th.

17 (Multiple parties speaking.)

18 MS. KAPPELMAN: Let him finish,

19 please, Bob. Let him finish his answer. Don't

20 interrupt him.

21 Go ahead, Kory.

22 A. Yeah. So there was a -- there was a

23 confrontation. I think there was a little bit of

24 history between the two ladies dating back sometime

25 prior. There was not a lot of, you know,

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1 to last paragraph that says, "This is not the case,

2 and Frances and I have a good working relationship."

3 Did you make any effort with Frances to

4 verify that Emily was correct that any mending of --

5 mending of the relationship had occurred and that

6 she and Emily then had a good working relationship?

7 A. At that point, we moved on. It was an

8 incident. I think ultimately in the end there

9 was -- Frances provided some form of commentary to

10 Matt at his request in terms of their interactions,

11 so that would have been provided to the talent

12 management team.

13 Q. Did you make any effort individually or, to

14 your knowledge, Mr. Witte make any effort to verify

15 the statement, "This is not the case, and Frances

16 and I have a good working relationship," as of the

17 date of this email?

18 A. Well, I saw the Slack messages, and that's

19 contrary to what Emily had written.

20 Q. And the email and the Slack messages were

21 dated what day?

22 A. This would have been August the 27th.

23 Q. Okay. And this email to you was dated

24 September 17th, so that was three weeks later.

25 So, again, did you make any effort to

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1 collaboration. And apparently Emily said or did

2 something to upset Frances, that she escalated that

3 to her manager who called Matt and then Matt called

4 myself.

5 I spoke to Emily and asked that she

6 politely reach out and talk to Frances, apologize

7 for upsetting her, that it was unintentional.

8 Emily was a little bit frustrated with

9 Frances because she hadn't responded to her in the

10 past at other meetings.

11 Ultimately, Emily agreed that was the right

12 thing to do. And then I saw some Slack messages

13 shortly after where she went after Frances and

14 basically said, "How dare you talk to my manager."

15 And that was completely unprofessional.

16 So very different outcome versus what we

17 discussed as far as how to handle that moving

18 forward.

19 Q. After you got this email, did you make any

20 effort to verify the truth of the statement, "This

21 is not the case, and Frances and I have a good

22 relationship," as of this date in September?

23 A. Sorry. Are you asking me a question

24 specific to that paragraph?

25 Q. There's parenthetical language in the next

Page 35

1 verify that three weeks later she had spoken to

2 Ms. -- she had spoken to Frances and they had a good

3 working relationship? Did you try to verify that

4 was true?

5 A. So there were a number of complaints from

6 other leaders that, quite honestly, kept me very

7 busy, that I didn't have to go back and circle with

8 Frances because there was a crisis almost at every

9 turn, it seemed.

10 Q. So the short answer is no; right? You

11 didn't go back to Frances and try to verify the

12 status of the relationship as of September 17th;

13 correct?

14 A. Yeah. So from my understanding, Frances

15 had a problem with Emily.

16 Q. Sir, you did not go back after

17 September 17th and try to verify the truth of the

18 statement by Ms. Forsythe that she had mended things

19 and that they had a good working relationship as of

20 September 17th; correct?

21 A. After -- this was the last time I spoke to

22 Emily, September 17th.

23 Q. And you didn't speak to Frances about her

24 statement in the email after September 17th either,

25 did you?

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10 (Pages 34 - 37)

1 A. Matt spoke to Frances.  
 2 Q. And so was he saying that -- did he tell  
 3 you that he was trying to verify the truth of  
 4 Emily's statement in this email about Frances?  
 5 A. Matt was collecting information from other  
 6 leaders that had similar challenges with their  
 7 interactions.  
 8 Q. Is the short answer then no, that he didn't  
 9 tell you that that's what he was trying to do by  
 10 talking to her?  
 11 MS. KAPPELMAN: Object to the form of  
 12 the question.  
 13 Kory, go ahead and answer.  
 14 A. He didn't say specifically there. But  
 15 there were several other peers and senior leaders  
 16 that had provided statements that are consistent  
 17 with the unprofessional, condescending,  
 18 unprofessional, you know, approach Emily has taken.  
 19 Q. If you know, how many of the statements  
 20 you're referring to were made without a request  
 21 being made for those written statements to be  
 22 prepared?  
 23 A. I'm not quite sure I understand the  
 24 question, other than the fact that some of the  
 25 leaders were already providing feedback to Matt and

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1 didn't work directly with you. Is that what you're  
 2 saying?  
 3 A. I did not know Arron Velarde until I was  
 4 working at Wayfair.  
 5 Q. Is there anybody who you worked with at  
 6 Tesla who was also working at Wayfair after you got  
 7 to Wayfair?  
 8 A. No.  
 9 Q. So no former coemployee of Tesla worked  
 10 with you after you came to Wayfair? Just a former  
 11 employee -- just a former coemployee of Walmart?  
 12 MS. KAPPELMAN: Asked and answered.  
 13 You can answer it a third time.  
 14 A. No.  
 15 Q. Did you tell Emily, as she states you  
 16 stated, "You don't think I'm a good fit for the  
 17 team" -- (Indecipherable).  
 18 MS. KAPPELMAN: You broke up, Bob.  
 19 But I think he's trying to ask you  
 20 about the last two sentences of that big paragraph,  
 21 "You stated that you don't think I'm a good fit,"  
 22 and forward. Did you tell her that?  
 23 A. Yeah. I don't recall specifically saying  
 24 "good fit."  
 25 What I recall saying was that -- very

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1 I.  
 2 Q. Whose written statements are you talking  
 3 about?  
 4 A. There was written statements from Frances  
 5 herself; Arron Velarde, who's a site director; his  
 6 boss, Victor Davis; Brian McCormick, who's a  
 7 regional director; Melissa Malik, who's a regional  
 8 director.  
 9 There could be some more, but that's the  
 10 few off the top of my head.  
 11 Q. Were all of those requested to be prepared  
 12 either requested by you or Mr. Witte?  
 13 A. Some of those were unsolicited.  
 14 Q. Which of those were unsolicited?  
 15 A. Arron's was unsolicited. Mel had provided  
 16 feedback on several occasions prior. I believe  
 17 Brian's was requested by Matt. And Victor Davis's  
 18 was requested by Matt.  
 19 Q. And who is Mel?  
 20 A. Melissa Malik is one of the regional  
 21 directors of the operation.  
 22 Q. Did you have a prior work relationship with  
 23 Mr. Velarde?  
 24 A. No.  
 25 Q. So Mr. Velarde worked at Tesla, but he

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1 pointedly that I can't do this any longer, like  
 2 continue to go on like this. "This is not working,"  
 3 is what I specifically said to her. And I said,  
 4 "The next steps are we're going to have a  
 5 sit-down -- a formal sit-down with the talent  
 6 management team to determine next steps." That is  
 7 what I said.  
 8 Q. And by talent management team, next steps,  
 9 you meant whether or not she was terminated?  
 10 A. No. Definitely not. I can't make that  
 11 decision. That is a talent management decision  
 12 based on the facts that, you know, are presented to  
 13 them.  
 14 Q. What were the possible next steps, sir?  
 15 A. Possible next steps were to review the  
 16 documentation on the behaviors that I had been  
 17 documenting, as well as what Matt had documented, to  
 18 determine the next steps. And the next steps would  
 19 be ultimately reviewed and decided upon with the  
 20 talent management team.  
 21 Q. Yeah. But that -- that's just talking  
 22 about talking. What about actual steps? What were  
 23 the steps that you were contemplating?  
 24 A. I can't take steps against anyone. That is  
 25 a talent management --

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1 Q. What were the steps --  
 2 MS. KAPPELMAN: You've got to let him  
 3 finish his answer, Bob. Seriously, I'm going to  
 4 enforce this because the guy has a right to finish  
 5 his testimony and his answer.  
 6 So, Kory, you can't what? You started  
 7 to say "I can't take."  
 8 A. I can't -- I mean, the next steps were to  
 9 have a sit-down to review the documented  
 10 interactions that were, you know, problematic. That  
 11 was the next steps.  
 12 Beyond that was the responsibility and  
 13 would be determined by the talent management team.  
 14 If they wanted to take any action from that point,  
 15 that is on the talent team.  
 16 Unfortunately, we didn't get to that point  
 17 before Emily resigned the following week.  
 18 MR. GOODMAN: Object to  
 19 responsiveness.  
 20 BY MR. GOODMAN:  
 21 Q. You were not in any meeting at which she  
 22 allegedly resigned, were you?  
 23 A. I was informed after the fact.  
 24 Q. Okay. And what date were you informed?  
 25 A. I believe it was Tuesday morning, which

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1 in that discussion.  
 2 Q. To be clear, you were told that -- you know  
 3 that somebody told her not to go to Atlanta;  
 4 correct?  
 5 A. I was informed after -- I believe it was  
 6 Tuesday morning -- that she's no longer with the  
 7 company and that she resigned.  
 8 Q. Who informed you of that?  
 9 A. That would have been talent management.  
 10 Q. Okay. Who in talent management?  
 11 A. That would have been Mike Behrendt.  
 12 (Clarification requested by the court  
 13 reporter.)  
 14 MR. GOODMAN: B-E-H-R-E-N-D-T.  
 15 BY MR. GOODMAN:  
 16 Q. And do you know somebody named Aaron  
 17 Berland?  
 18 A. Sorry. What was the name?  
 19 Q. Aaron. First name A-A-R-O-N. Last name  
 20 begins with a B. Did you know anybody fitting that  
 21 description at Tesla?  
 22 A. No.  
 23 Q. And, again, nobody who ever worked at Tesla  
 24 also worked at Wayfair when you were there?  
 25 MS. KAPPELMAN: Object to the form of  
 Page 44

1 would have been the 24th or the 25th.  
 2 Q. What date were you told that she, quote,  
 3 resigned?  
 4 A. I believe the 24th or the 25th of  
 5 September. It was the week after the last  
 6 interaction.  
 7 Q. She took a PTO day off on the 20th;  
 8 correct?  
 9 A. Yes. I recall that, yes.  
 10 Q. And she gave you notice of that; correct?  
 11 A. Correct.  
 12 Q. And then she came -- she was at work on the  
 13 23rd, that Monday; correct?  
 14 A. I was not in Kentucky. I recall that she  
 15 was traveling to Atlanta.  
 16 Q. And she was going to travel to Atlanta on  
 17 Tuesday; correct?  
 18 A. Yes. I believe that's correct, yup.  
 19 Q. And she was told not to go to Atlanta;  
 20 right?  
 21 A. Not by myself.  
 22 Q. By somebody; correct? Somebody said, "Do  
 23 not go to Atlanta; you're fired"?
 24 A. I believe so.  
 25 I can't say that, no. I was not involved

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1 the question.  
 2 You can answer, Kory.  
 3 A. I was at Tesla for six or seven months in  
 4 2016. No, I was not -- I didn't know anyone at  
 5 Wayfair that had worked at Tesla when I was at  
 6 Tesla.  
 7 Q. Were you friends at Wayfair with anybody  
 8 named Arron?  
 9 A. At Tesla?  
 10 Q. No. At Wayfair. Is there anybody in your  
 11 area named -- I think it's A-R-R-O-N, who you are  
 12 friendly with at Wayfair?  
 13 A. Yeah. Well, the only Arron is Arron  
 14 Velarde that I knew when I was working at Wayfair.  
 15 Q. Okay. And had you ever worked with him  
 16 before you got to Wayfair?  
 17 MS. KAPPELMAN: Asked and answered  
 18 four times.  
 19 You can answer again, Kory.  
 20 A. No.  
 21 Q. Did you -- were you friendly with Arron  
 22 outside work at Wayfair?  
 23 A. Sorry. Can you repeat that question?  
 24 Q. Were you friendly with him outside work at  
 25 Wayfair?

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12 (Pages 42 - 45)

1 A. No. I had never met him in person before  
 2 Emily resigned.  
 3 Q. Again, you've never seen a resignation  
 4 letter; correct?  
 5 A. I'm going by what I was informed of.  
 6 Q. And you were not party to any conversation  
 7 involving any resignation; correct?  
 8 A. Only after the fact.  
 9 Q. Have you had any discrimination and  
 10 harassment retaliation training at Wayfair?  
 11 A. Yes.  
 12 Q. What do you understand -- the  
 13 discrimination -- sex discrimination, does that  
 14 encompass expressing a preference for male employees  
 15 over female employees?  
 16 MS. KAPPELMAN: Object to the form of  
 17 the question. You're asking him to come to a legal  
 18 conclusion.  
 19 Are you asking him what the training  
 20 says?  
 21 BY MR. GOODMAN:  
 22 Q. Everything is based on the training, sir.  
 23 MS. KAPPELMAN: You're asking him a  
 24 legal conclusion. So you can ask him what the  
 25 training says or what he understands.

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1 A. You have to repeat the question. I only  
 2 caught "August 19th."  
 3 Q. How many conversations did you have with  
 4 Emily in August 2019?  
 5 A. I don't understand your question. I had  
 6 conversations with people all the time. So if  
 7 you're looking for a specific number, I don't know.  
 8 I can't answer that.  
 9 Q. I'm sorry. Did you say the Velarde  
 10 complaint was solicited -- requested to be put in  
 11 writing?  
 12 A. Sorry, Bob. I didn't --  
 13 Q. Did you or Mr. Witte request that  
 14 Mr. Velarde put any complaint in writing?  
 15 A. I did not.  
 16 Arron had reached out to me, though, in --  
 17 a couple of times. He had called me a couple of  
 18 times. I had touched base with him. And he had  
 19 sent some emails as well, just in terms of his  
 20 interactions with Emily, which were not positive.  
 21 Q. Okay. But you don't recall asking -- apart  
 22 from Mr. Witte, you don't recall asking Mr. Velarde  
 23 to put anything in writing; correct?  
 24 A. I don't recall. I know he had sent me --  
 25 reached out to me directly, asking to not involve

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1 BY MR. GOODMAN:  
 2 Q. Based on the training, is it your  
 3 understanding that discrimination encompasses -- sex  
 4 discrimination encompasses expressing preference to  
 5 a female over male employee?  
 6 MS. KAPPELMAN: Female over male, or  
 7 male over female?  
 8 MR. GOODMAN: Male over female.  
 9 Excuse me.  
 10 A. Sexual harassment training doesn't -- it  
 11 doesn't discuss, you know, who you hire. It doesn't  
 12 discuss whether we hire males or females.  
 13 Q. It doesn't discuss -- it doesn't address --  
 14 also address sex discrimination, only sexual  
 15 harassment?  
 16 A. The purpose of the training is sexual  
 17 harassment.  
 18 Q. Have you ever gotten any sex discrimination  
 19 or other discrimination training at Wayfair?  
 20 A. Just sexual harassment training.  
 21 Q. How much interaction did you have with  
 22 Emily in August 2019?  
 23 MS. KAPPELMAN: Object to the form of  
 24 the question.  
 25 If you can quantify it, Kory.

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1 Emily in projects in his building, which -- yes.  
 2 Q. Do you know if Mr. Witte requested him to  
 3 put anything in writing?  
 4 A. I don't know. I can't answer for Matt.  
 5 Q. Had anybody -- did either you or Mr. Witte  
 6 request a woman named Christa Cabriales to put a  
 7 complaint in writing?  
 8 A. I've never heard that name before in my  
 9 life.  
 10 Q. What about a person named Jonathan Marcoux,  
 11 M-A-R-C-O-U-X? Did either you or Mr. Witte request  
 12 Mr. Marcoux to put something in writing?  
 13 A. I don't know Mr. Marcoux. Never met him,  
 14 never seen the name before.  
 15 Q. Did you discuss the proof of a written  
 16 complaint by Arron Velarde with Mr. Witte?  
 17 A. I had discussions with Arron regarding his  
 18 interactions with Emily.  
 19 MR. GOODMAN: Objection to  
 20 responsiveness.  
 21 BY MR. GOODMAN:  
 22 Q. Did you ever discuss a written complaint  
 23 with him or with Mr. Witte?  
 24 A. I discussed with both, yes.  
 25 Q. His written complaint?

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13 (Pages 46 - 49)

1 A. His -- no, not the final formal complaint  
 2 that was submitted. But complaints in general, yes.  
 3 Q. Did you make any effort to determine the  
 4 truthfulness of the -- what you're calling the final  
 5 written complaint by Mr. Velarde?

6 A. Yes, absolutely.

7 Q. How did you -- how did you try to verify  
 8 the truthfulness of his communication?

9 A. I spoke very openly with Kelly Brieg, who's  
 10 Emily's project manager that was managing a sorter  
 11 project in Lathrop, and they spoke to Emily directly  
 12 about her unwillingness to share project schedules  
 13 with our operations partners.

14 (Clarification requested by the court  
 15 reporter.)

16 MS. KAPPELMAN: How do you spell that,  
 17 Kory?

18 THE WITNESS: It B like Bravo, Romeo,  
 19 India, echo, gulf.

20 MS. KAPPELMAN: B-R-I-E-G.

21 THE WITNESS: Correct.

22 BY MR. GOODMAN:

23 Q. Did you talk with Mr. Velarde about Davina?  
 24 I'm forgetting her last name right now. Davina.  
 25 Anybody named Davina?

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1 A. Jeff Neuharth is a senior project manager  
 2 that was reporting to Emily.

3 Q. I apologize.

4 Did you ever talk with Jeff Neuharth about  
 5 Emily?

6 A. No. Not that I recall.

7 Q. Did you and Mr. Witte request that he put  
 8 any statement in writing?

9 A. I did not.

10 Q. Who is Melissa Malik?

11 A. Melissa Malik is an operations regional  
 12 director.

13 Q. Did you ever communicate with Emily  
 14 concerning Ms. Malik?

15 A. I spoke to Emily about Melissa, and I've  
 16 spoken to Melissa about Emily.

17 Q. Did you ever talk with Allan Lyall about  
 18 Emily?

19 A. Yes.

20 Q. What was the subject of any conversation  
 21 with Emily about that?

22 A. It was around schedules and not providing  
 23 dates, firm dates, and also not supporting the daily  
 24 peak readiness calls. Emily had decided that she  
 25 was not going to attend the meetings because it was

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1 A. I did not -- Davina was an employee, an  
 2 associate before I started at Wayfair.

3 Q. Did Mr. Velarde's statement refer to Davina  
 4 in any way?

5 A. His formal statement may have had Davina in  
 6 there.

7 Q. And you're not aware of anybody making an  
 8 effort to verify the truthfulness of his statement  
 9 to the extent it referred to Davina; correct?

10 A. Correct, yeah.

11 Q. Do you know a person name Jeff Neuharth?

12 A. Yes. Jeff is her -- one of her senior  
 13 project managers. He's still working with  
 14 Walmart -- I'm sorry, with Wayfair, and he's on our  
 15 team today.

16 Q. Did you and Mr. Witte ever discuss a woman  
 17 name Christa Cabriales, C-A-B-R-I-A-L-E-S?

18 MS. KAPPELMAN: Asked and answered.

19 You can answer again, Kory.

20 A. I've never heard of her name before until  
 21 now, so the answer is no.

22 Q. Who is Jeff Neuharth?

23 MS. KAPPELMAN: We just went over  
 24 this.

25 But you can go over it again, Kory.

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1 a waste of her time.

2 Q. A meeting with who?

3 A. This was the daily readiness calls with  
 4 Melissa. I asked Emily to -- this was early on.  
 5 This was August the 27th, going back to the 27th. I  
 6 asked Emily to participate in daily scheduled calls  
 7 to provide updates to her operations partners, and  
 8 she pretty much refused to attend the meetings. She  
 9 deleted the -- the series of meetings. And when she  
 10 finally got on three days later after Mel had called  
 11 Matt and myself and complained about not having  
 12 support, Emily basically told Melissa that she  
 13 doesn't have time for the meeting, even though I had  
 14 asked her three times to attend.

15 Q. Who is Victor Davis?

16 A. Victor Davis was the West Coast regional  
 17 director of operations.

18 Q. Do you know whether Victor Davis had any  
 19 prior dealings with Mr. McDole?

20 A. Well, Victor Davis was the regional  
 21 director for the West Coast, Arron Velarde reported  
 22 to Victor, and Mike McDole reported to Arron.

23 MR. GOODMAN: Object to  
 24 unresponsiveness.

25 BY MR. GOODMAN:

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14 (Pages 50 - 53)

1 Q. Was there any prior -- were there any prior  
2 dealings between McDole and Victor Davis, if you  
3 know?

4 A. I'm not aware, no.

5 Again, my history goes back seven weeks  
6 total of interaction.

7 Q. Was Mr. Velarde ever on paternity leave  
8 when he was at Wayfair and you were also at Wayfair?

9 A. Yes.

10 Q. Do you know how many face-to-face dealings  
11 Ms. Forsythe had with Mr. Velarde before he went on  
12 paternity leave?

13 A. I did not know Arron before he went on  
14 paternity leave.

15 Q. So you don't know the answer to my  
16 question, necessarily?

17 MS. KAPPELMAN: No. I think it's  
18 pretty clear that he doesn't know how many face-to-  
19 face meetings Mr. Velarde had with Ms. Forsythe  
20 before he went on paternity leave because he's never  
21 met Mr. Velarde and he wasn't involved in the  
22 meetings.

23 Q. Do you believe that his paternity leave was  
24 before you started?

25 A. When I first knew of Arron Velarde, it was

1 Q. Did he tell you how many dealings he had,  
2 how many face-to-face interactions he had with Emily  
3 before he went on leave?

4 A. He did not.

5 Q. Did you ever talk with Brian McCormick  
6 about Emily?

7 A. Only when Matt had requested feedback on  
8 Emily from Brian.

9 Q. So Matt requested him to give a statement?

10 A. Yes.

11 Q. Have you told us about -- do I recall you  
12 only asked one person to give a statement and that  
13 any other statements that were requested were  
14 requested by Mr. Witte?

15 A. I was not requesting people to provide  
16 statements other than what I provided myself and was  
17 documenting myself. I did not solicit people for  
18 feedback.

19 Q. Okay. Did Emily ever address with you by  
20 email her dealings with Ms. Thunder, which I've told  
21 you she was having communicating?

22 MS. KAPPELMAN: Object to the form of  
23 the question.

24 You can answer if you understand it.

25 A. I'm not quite sure I understand, like,

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1 regarding the sorter project and Emily not sharing  
2 the schedule with his team. He was on paternity  
3 when I got involved with trying to understand the  
4 deliverables for Lathrop. That's when I was  
5 introduced to Arron for the first time. And he was  
6 off on maternity leave -- paternity leave, sorry.  
7 And he was still engaging via email and phone calls,  
8 even though he was off, technically.

9 Q. And he didn't tell you what his dealings  
10 with Emily had been before he went on leave?

11 A. I did not know him before he went on leave.

12 Q. All right. But he didn't tell you about  
13 what the dealings with her had been before he went  
14 on leave in your conversation with him; is that  
15 correct?

16 A. He had described some interactions with  
17 Emily that were not favorable: that she was  
18 condescending and noncooperative, not collaborative,  
19 not sharing information, intentionally withholding  
20 information. That is the -- one of my first  
21 dealings with Arron was him describing his  
22 interactions with Emily.

23 MR. GOODMAN: Object to  
24 responsiveness.

25 BY MR. GOODMAN:

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1 the --  
2 Q. Did Emily ever describe in writing  
3 difficulty she was having communicating with  
4 Ms. Thunder?

5 A. No. Not to me, no.

6 Q. Ms. Forsythe recalls that in your first  
7 conversation with her after she told --  
8 (Indecipherable).

9 (Clarification requested by the court  
10 reporter.)

11 BY MR. GOODMAN:

12 Q. Ms. Forsythe has recollected that you asked  
13 her what she made and then made a remark about  
14 people at Walmart that might be interested in coming  
15 over to Wayfair that were not going to work for less  
16 than 135. "I only have your L6 spot left to figure  
17 this out."

18 MS. KAPPELMAN: "I only have your L6  
19 spot to figure this out," is what he said.

20 BY MR. GOODMAN:

21 Q. Did you say that to her, or words to that  
22 effect?

23 A. No. Absolutely not. And she's an L5. I  
24 was an L6.

25 Q. You were what?

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15 (Pages 54 - 57)

1 A. I am an L6. I was hired as an L6.  
 2 Q. Did you say that about an L5 position?  
 3 A. She was an L5. I wouldn't ask her for what  
 4 she makes when I have access to that information in  
 5 Workday.  
 6 Q. And was this -- the first day you spoke  
 7 with her, how close was that to the first day you  
 8 actually worked at Wayfair? Or was it the first  
 9 day?  
 10 MS. KAPPELMAN: Asked and answered.  
 11 A. It was one week after. I met her one week  
 12 to the day after.  
 13 Q. Had you looked at Workday to look up  
 14 people's salaries during any part of the prior week?  
 15 A. No.  
 16 Q. I'm putting up a document that starts with  
 17 Wayfair 1275, and it identifies you as a  
 18 contributor. Did you help write that?  
 19 A. Yes.  
 20 Q. And why did you help write that?  
 21 A. I was documenting the interactions, as I  
 22 stated, because we were going to have a sit-down  
 23 with the talent management team to determine what  
 24 the next steps were to address the behaviors and the  
 25 performance issues.

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1 A. This was -- I believe I started to write  
 2 this around the 16th of September, but I had  
 3 documented --  
 4 Q. The first day that --  
 5 MS. KAPPELMAN: Please don't interrupt  
 6 Kory. I really would like him to finish his  
 7 complete answer.  
 8 BY MR. GOODMAN:  
 9 Q. Are you finished?  
 10 MS. KAPPELMAN: You said you had  
 11 documented it, and then you got cut off.  
 12 A. These were documented interactions. I  
 13 believe I started to collect all of this information  
 14 the week of the 16th.  
 15 Q. But the information you record on the first  
 16 page of this exhibit is dated back to August 27th;  
 17 is that correct?  
 18 A. It's correct that the date of the incident  
 19 was August 27th. But that -- all of the information  
 20 was there. It was a matter of just collecting  
 21 information.  
 22 Q. Right. So you were collecting -- so you  
 23 were accumulating information between the 27th and  
 24 the week of the 16th; correct?  
 25 A. The system is a repository of information.

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1 Q. Okay. And this is -- when was this  
 2 written?  
 3 A. This was written around the week of the  
 4 16th.  
 5 Q. September 16th; right?  
 6 A. Yes.  
 7 MR. GOODMAN: I'll make this  
 8 Exhibit 2. This is 1275 through 1289.  
 9 (McKnight Exhibit 2, document Bates-  
 10 stamped Wayfair 1275 through 1289, marked for  
 11 identification.)  
 12 BY MR. GOODMAN:  
 13 Q. Did anybody request you to put this thing  
 14 together?  
 15 A. I was documenting the interactions.  
 16 Q. Did anybody request you and Mr. Witte to  
 17 create this document?  
 18 A. No. This was something that Matt and I  
 19 were putting together as the performance and the  
 20 behaviors were becoming, quite honestly, more  
 21 difficult to -- every day it was a big challenge for  
 22 the team, and we needed to have a formal sit-down to  
 23 decide what was best for Emily.  
 24 Q. When was the first day you say you started  
 25 collecting this information?

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1 It collects the data by its very nature. I was  
 2 simply collecting some pieces of this that were  
 3 demonstrating the unprofessional and condescending  
 4 behavior, and that's what the purpose of this  
 5 document was. It was a collection of interactions.  
 6 Q. And the information that you were  
 7 collecting started -- the first entry -- the first  
 8 such piece of information was as of August 27th;  
 9 correct?  
 10 A. That's when I saw the first real, you know,  
 11 warning signs is what I stated.  
 12 Q. And that was at -- and that was about 13  
 13 days after Emily had made her formal complaint of  
 14 sexual harassment and other misconduct by  
 15 Mr. McDole; correct?  
 16 A. That is correct.  
 17 Q. Did Mr. McDole ever move his residence to  
 18 California from Texas?  
 19 A. I don't know. I didn't really know Mike  
 20 McDole at all.  
 21 Q. Do you know if he ever got what I gather is  
 22 called a "relocation bonus" at Wayfair?  
 23 A. I don't know. That was before my time.  
 24 Q. Before you first met with Emily -- strike  
 25 that.

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16 (Pages 58 - 61)

1       On August 17th when you had that  
 2 conversation with Emily where you say she drove to a  
 3 facility where you were at, Mr. Witte had informed  
 4 you of her sexual harassment complaint; correct?  
 5       A. Are you referring to September 17th? I  
 6 think you said August the 17th.  
 7       Q. Let me restate that, then.  
 8       Yeah, September 17th you knew about the  
 9 sexual harassment complaint, that it was made in  
 10 August; correct?  
 11      A. I did, yes.  
 12      Q. And when did you first know that?  
 13      A. Matt and I were traveling. I believe it  
 14 was the third week I had joined Wayfair. We were  
 15 traveling in the UK together at another site. Matt  
 16 had shared a document with me that Emily had  
 17 prepared. It was really, really late, probably  
 18 after midnight, before I first read it. And when we  
 19 met in the morning, we both agreed that we needed to  
 20 escalate this to talent management together. And so  
 21 we scheduled that appointment that morning, and we  
 22 had a discussion with them late -- very late our  
 23 time in the UK.  
 24      Q. And sometime in August 2019 after that  
 25 occurred, you told Emily that what was described as

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1       MS. KAPPELMAN: Asked and answered.  
 2       You and answer again, Kory.  
 3       A. I completely stayed out of the topic. It  
 4 was not in my hands. It was in the hands of the  
 5 talent management team. And my focus was on  
 6 delivering the projects that were in front of us.  
 7       And Emily did not appear to be distracted  
 8 by the investigation. And I know for a fact that  
 9 she had thanked Matt for escalating it to talent  
 10 management.  
 11      MR. GOODMAN: Okay. Object to  
 12 responsiveness.  
 13      BY MR. GOODMAN:  
 14      Q. So you're saying -- what I'm hearing is  
 15 that sometime between September 17th -- excuse me --  
 16 August 14th and August 27th, you think that  
 17 Ms. Forsythe began to conduct herself in a way that  
 18 was objectionable?  
 19      MS. KAPPELMAN: Object to the form of  
 20 the question.  
 21      You can answer, Kory.  
 22      A. Yes. So that would have been my third  
 23 week, roughly -- third to fourth week with the  
 24 company is when I started to see some challenges  
 25 with her just taking some simple direction.

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1 having been done by Mr. McDole was either disgusting  
 2 or despicable; correct?  
 3       A. That is not correct.  
 4       Q. Did you tell Emily that you had any -- did  
 5 you express any opinion of the alleged sexual  
 6 harassment -- excuse me -- unconsented touching and  
 7 bullying by Mr. McDole?  
 8       A. I did not. I never had any discussion with  
 9 Emily about the accusations. That was only with the  
 10 talent management team.  
 11      Q. So if she said that you said that it was  
 12 disgusting or despicable, intolerable, you would  
 13 deny that? You deny that; correct?  
 14      A. That's correct.  
 15      Q. Did you think it was disgusting,  
 16 despicable, or inappropriate, what was described  
 17 as -- the conduct of his that was described?  
 18      A. I thought it was completely inappropriate  
 19 if it were absolutely true, and that's why we  
 20 escalated it to talent as soon as we found out. We  
 21 did not wait, even though we were overseas.  
 22      Q. But you never expressed any sympathy to her  
 23 about the conduct by telling her that you thought it  
 24 was inappropriate or disgusting or despicable;  
 25 correct?

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1       Q. Are you aware of any -- anything that --  
 2 anything in her life, personal or work life, after  
 3 she made her formal complaint, sex discrimination  
 4 and sexual harassment, to conduct herself sometime  
 5 over the course of the next 12 days prior to  
 6 August 27th in a different way than she had before?  
 7       MS. KAPPELMAN: I'm going to object to  
 8 the question. I'm not even sure I understand what  
 9 it is. It meandered for a while.  
 10      So what is it you're asking, Bob?  
 11      BY MR. GOODMAN:  
 12      Q. Do you know anything in Emily's personal  
 13 life or work life that would have led to her  
 14 conducting herself in a different way after  
 15 August 14th but prior to August 27th when you say  
 16 you started taking notes on her?  
 17      A. So the system was obviously documenting  
 18 interactions. Again, I went back and collected  
 19 information in September. The intent was not to  
 20 document interactions. Those were, by default,  
 21 systematically available.  
 22      I did not see any noticeable difference in  
 23 Emily's behavior after the fact. I believe even  
 24 three-plus weeks in, she sent me a text saying how  
 25 happy she was that I was on the team, and she felt a

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17 (Pages 62 - 65)

1 great amount of stress relief. And I did provide  
2 that to Lynn.

3 MR. GOODMAN: Object to  
4 responsiveness.

5 BY MR. GOODMAN:

6 Q. Are you aware of anything in her personal  
7 or work life which would have led her to engage in  
8 conduct subject to criticism in late -- beginning in  
9 late August 2019 of a kind she had not previously  
10 perceived?

11 (Clarification requested by the court  
12 reporter.)

13 BY MR. GOODMAN:

14 Q. Was there anything in her personal or work  
15 life that you know that happened between August 14th  
16 and August 27th that would have led to her suddenly  
17 being criticized for her manner of communication?

18 MS. KAPPELMAN: Object to the form.  
19 She wasn't suddenly criticized.

20 But go ahead, Kory.

21 BY MR. GOODMAN:

22 Q. If you know.

23 A. Yeah. I saw no noticeable change in how  
24 Emily was, you know, basically conducting business  
25 until we had an opportunity to start participating

1 team, was asking -- a woman on his team who was,  
2 like, very similar to you. You know what happened  
3 to her? She left the team."

4 Did you say that to her on September 11th?

5 A. No.

6 Q. You're deny saying anything like that to  
7 her on September 11th?

8 A. I don't recall saying anything like that.

9 Q. Are you denying it, or you just don't  
10 recall?

11 A. I'm denying it. I don't recall ever saying  
12 anything about this matter.

13 Q. If the conversation happened on  
14 September 10th, would you equally deny it?

15 A. Are you saying I had the same  
16 conversation --

17 Q. No. I'm saying I see that there's -- there  
18 was some uncertainty of whether it was the 10th or  
19 the 11th. If it was on the 10th, not the 11th, do  
20 you also deny saying anything like that?

21 A. I deny saying anything, yes, of the such.

22 (Interruption by the court reporter.)

23 THE VIDEOGRAPHER: The time is now  
24 4:35. We're off record.

25 (Recess taken.)

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1 in daily calls and she just refused to follow the  
2 simple direction and request to participate in the  
3 meetings after three repeated attempts to have her  
4 respond to that.

5 Q. And when was that, sir?

6 A. August the 27th.

7 Q. Okay. Again, my question is was there  
8 anything that you're aware of -- and the answer may  
9 be nothing -- anything you're aware of in her  
10 personal or work life that would have caused a  
11 change in her approach to work in late August 2019?

12 A. I'm not aware of anything in her personal  
13 life that could have caused her to behave the way  
14 she did.

15 Q. Anything in her work life during the  
16 same --

17 A. Or her personal life.

18 And I felt it was inappropriate for me to  
19 talk about the investigation that was ongoing as  
20 well, so I refrained entirely the entire time.

21 Q. Did you have a conversation on  
22 September 11th with Emily?

23 A. I could have.

24 Q. I'll tell you what her recollection is.

25 "McKnight told me he had a woman like me on his

1 THE VIDEOGRAPHER: This is the  
2 beginning of Tape 2. Time is now 4:42. Back on  
3 record.

4 BY MR. GOODMAN:

5 Q. Ms. Forsythe was asked by Wayfair's lawyer  
6 about a text you sent her in August when you said,  
7 "Mike has reached out to me and wants me to call  
8 him" -- (Indecipherable).

9 (Interruption by the court reporter.)

10 BY MR. GOODMAN:

11 Q. The text stated, among other things, "Mike  
12 has reached out to me and wants me to call him. I  
13 know there's some friction. I want to talk to you  
14 before I talk to him."

15 Do you remember sending that text?

16 A. Yes, I do.

17 Q. What was the context of you sending that  
18 text to Emily?

19 A. So Mike had heard that Emily was traveling  
20 to the site and reached out to me and asked that she  
21 not be involved in his site, and so I wanted to  
22 understand why. I understood that there was some  
23 history prior. Neither of them got into the  
24 details.

25 My focus was entirely on keeping it

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18 (Pages 66 - 69)

1 professional and respectful and giving me an  
2 opportunity, as a new leader, to come in to make  
3 things right for the team, to support Emily, and to  
4 support the company.

5 Q. Was this before or after you became aware  
6 of her August 14th complaint?

7 A. This was before. This was my first  
8 interaction with Mike McDole.

9 Q. Did you end up talking with Ms. Forsythe  
10 before you talked with Mike, as contemplated?

11 A. I believe so. I spoke with both of them.

12 Q. Did you speak to her first, as you said you  
13 would?

14 A. I might have, yes.

15 Q. Do you remember what she communicated to  
16 you?

17 A. She just basically said that they had a  
18 relationship prior, and she didn't get into all the  
19 details.

20 I wasn't really interested in understanding  
21 all of those details, other than the fact that I  
22 wanted to support her as a PM, and I wanted him to  
23 respect her and what we were doing in his building,  
24 which is a Wayfair-owned site. And I wanted to make  
25 sure that she was okay with going there and that I

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1 with her?

2 A. Yeah. I don't recall. From what I recall  
3 there was -- there wasn't any major, you know,  
4 conflict of any sort or confrontation that I recall.

5 Q. Okay. And when you told her you had her  
6 back, is that when she said that "You've relieved  
7 some stress for me. I appreciate it"?

8 A. I think it was -- it was very closely  
9 related to that time frame.

10 Q. Did Mr. Witte talk to you about

11 Ms. Forsythe expressing to him that she may want to  
12 look for -- transfer to another team within Wayfair  
13 in early September?

14 A. Yes, he did.

15 Q. Did he tell you that she -- that that was  
16 because of the stress of dealing with Mr. McDole?

17 A. No, he did not say that.

18 I recall having a conversation and  
19 providing Emily with feedback from Melissa, and  
20 Melissa was not happy that Emily blew off her  
21 meetings. I provided that feedback to Emily. She  
22 didn't take the feedback very well. And I think  
23 shortly after that, it could have been a day later,  
24 she was asking Matt to potentially switch teams.

25 MR. GOODMAN: Object to

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1 had her back. And that was the essence of the  
2 discussion.

3 Q. And you referred to a prior relationship.  
4 What did she tell you precisely?

5 A. She told me that they had gone out to lunch  
6 one time, and that was it.

7 Q. Gone out to lunch while they were working  
8 together at Wayfair? Is that your understanding?

9 A. Yes. That's what she stated.

10 Q. And then you talked to him after that?

11 A. I spoke to him after that and asked that he  
12 give me a chance.

13 He complained that Emily was not  
14 professional, that she didn't communicate the  
15 schedules, and that she was not sharing information  
16 with him.

17 And I told him that -- just give me a  
18 chance. I will work to make sure that we support  
19 him as a partner and that Emily would support the  
20 project.

21 And Emily agreed to the same context in  
22 discussion, and she traveled out to the site after a  
23 discussion I had with both.

24 Q. Do you know anything more about the visit  
25 that she made to the site after that conversation

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1 responsiveness. I haven't asked a question.

2 BY MR. GOODMAN:

3 Q. Does Wayfair follow a procedure that  
4 contemplates counseling and warnings and then a  
5 performance improvement plan in that order?

6 MS. KAPPELMAN: Again, I'm going to  
7 object. This witness is here in his personal  
8 capacity. He's not a 30(b)(6). If you have any  
9 questions about Wayfair's policy or progressive  
10 discipline policy --

11 BY MR. GOODMAN:

12 Q. Based on your experience at Wayfair, does  
13 it have a policy that contemplates counseling,  
14 warnings, other disciplinary notices followed by a  
15 performance improvement plan?

16 MS. KAPPELMAN: If you know.

17 THE WITNESS: Sorry, Lynn. What was  
18 that?

19 MS. KAPPELMAN: If you know.

20 A. Yeah, no. I mean, the first line of,  
21 obviously, interaction is with the supervisors. So  
22 the supervisor is there to coach and mentor and  
23 support the associates. That's what I'm here for.  
24 That's what I was there for her. That's what I was  
25 doing the entire time.

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19 (Pages 70 - 73)

1 I think as you progress along that path, if  
 2 things continue to escalate or become unresolved, I  
 3 think, you know, the step before, like, you get to a  
 4 PIP, obviously you have to have documented  
 5 interactions, and then you have a formal sit-down.

6 At that point, it's really up to talent  
 7 management whether they think that a PIP is the  
 8 right tool. They may not chose to go that avenue.  
 9 They may have more discussions with the employee,  
 10 the associate, and then give them another  
 11 opportunity.

12 Q. Yeah. But based on your experience, what  
 13 is the latter from the first interaction to the most  
 14 serious prior to termination? What is the latter?

15 MS. KAPPELMAN: I'm going to object.  
 16 You know, to the extent you want information about  
 17 Wayfair's policies on progressive discipline, I'm  
 18 happy to produce a 30(b)(6) witness. That's not  
 19 this guy. He's here --

20 (Multiple parties speaking.)

21 Let me finish with my objection.

22 He's here in his individual capacity  
 23 based on his personal knowledge as a manager in this  
 24 case, not his knowledge of Wayfair's performance  
 25 improvement planning system.

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1 with the immediate supervisor. If things don't  
 2 improve, the next step would be to have a formal  
 3 review and sit down and go through the  
 4 documentation, at which point I think the -- before  
 5 termination would come a PIP. So a performance  
 6 improvement plan would be the next step,  
 7 effectively.

8 Q. So there's no -- are you aware of whether,  
 9 based on your training and experience, Wayfair  
 10 provides any disciplinary actions, written  
 11 disciplinary actions, prior to what you're calling  
 12 the formal review and PIP?

13 MS. KAPPELMAN: Again, this fellow is  
 14 not in HR at Wayfair. It's not a 30(b)(6)  
 15 interview. He is just a manager who's been there  
 16 for 12 months and may or may not know about  
 17 Wayfair's procedures and policies and formal  
 18 disciplinary procedures.

19 So, Kory, with that, whatever you  
 20 know.

21 MR. GOODMAN: If he doesn't know, he's  
 22 perfectly free to state it.

23 BY MR. GOODMAN:

24 Q. Based on your training and experience, is  
 25 there a step between coaching and what you're

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1 BY MR. GOODMAN:

2 Q. Have you, since coming to Wayfair, had to  
 3 address performance management issues?

4 A. I've never put anyone on a PIP in my  
 5 career, no.

6 Q. What do you understand is Wayfair's  
 7 approach to performance management based upon  
 8 training and experience at Wayfair since you  
 9 started?

10 MS. KAPPELMAN: Same objection. This  
 11 is more appropriate for a 30(b)(6) witness.

12 MR. GOODMAN: I can ask him --  
 13 Counsel, I can ask him about his own training, and I  
 14 can certainly ask about his own experience. So  
 15 that's -- I'm limiting it to that right now.

16 BY MR. GOODMAN:

17 Q. What is your understanding of the latter of  
 18 performance management from least intervention to  
 19 termination at Wayfair based upon your training and  
 20 experience at Wayfair?

21 MS. KAPPELMAN: Same objection.

22 You can answer, Kory. Whatever you  
 23 know.

24 A. Sure. My understanding is obviously  
 25 coaching, like I said. First line of interaction is

1 calling a formal review that involved a written  
 2 disciplinary notice?

3 A. Not that I'm aware of.

4 And even when I spoke to talent management  
 5 toward the end of September, the week of the 16th,  
 6 there was no mention of a formal written action  
 7 taken.

8 Q. Okay. What was discussed the week of the  
 9 16th of being a possible performance management  
 10 step?

11 A. What was discussed was the opportunity to  
 12 have a sit-down and review the documentation.

13 Q. Okay. And you never scheduled that with  
 14 Emily; correct?

15 A. I did not.

16 Q. And you're not aware of Mr. Witte doing so;  
 17 correct?

18 A. I'm not aware of that, and I don't  
 19 believe --

20 (Multiple parties speaking.)

21 MS. KAPPELMAN: Let him finish his  
 22 answer, Bob. He hadn't finished his answer.

23 A. It was not scheduled, to my knowledge.

24 Q. Did you ever tell Emily that negative  
 25 comments were being solicited from other Wayfair

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20 (Pages 74 - 77)

1 employees about her -- that statements critical of  
2 her were being solicited from other Wayfair  
3 employees?  
4 A. I had told her that I had received feedback  
5 on her performance on the 17th of September.  
6 Q. You told her that you had written feedback  
7 or just feedback generally?  
8 A. Just feedback that I'd received from other  
9 peers and leaders.  
10 Q. You didn't tell her that you had written  
11 statements; correct?  
12 A. I don't recall if I did. It was in the  
13 same meeting that she came in and was very upset and  
14 surprised me with her behavior.  
15 Q. Right. And you didn't tell her that any  
16 statements, written statements, has been solicited  
17 therefore; correct?  
18 A. No.  
19 And, again, I was documenting the  
20 interactions. They were documented systematically.  
21 It was just -- I was collecting the interactions  
22 myself. I was not soliciting.  
23 Q. Did you ever criticize Mr. Witte for  
24 soliciting statements?  
25 A. I did not.

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1 A. I believe so, yeah. This is delaying the  
2 sorter installation in Lathrop, which is what the  
3 site was asking for.  
4 Q. Okay. And did you end up delaying that?  
5 A. Yes, it was delayed.  
6 Q. Okay. And Mr. Velarde wanted it to be;  
7 correct?  
8 A. Yes. It was to help the operation move  
9 their outbound receiving function, which Emily  
10 was --  
11 Q. Why did Mr. Velarde want it delayed?  
12 A. Because he was operating in the space.  
13 Q. And why did you approve it being delayed?  
14 A. Because it wasn't necessary to be installed  
15 when the schedule was originally documented to be  
16 installed -- detailed to be installed. It wasn't  
17 critical that the project went live on the date that  
18 it was scheduled to go live, so we were working with  
19 the site to push the date out. I think it may have  
20 been a couple of weeks. It wasn't substantial.  
21 There was an unwillingness on Emily's part  
22 to delay the schedule at all, and that was the rub  
23 that the operations team did not like. And she just  
24 was not being -- yeah, she was just not being a good  
25 business partner.

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1 Matt was aware of the behavioral problems  
2 all along. I spoke very openly with Matt, and  
3 seeked his understanding and guidance as well. So  
4 he was very informed of the interactions and  
5 witnessed them himself.  
6 Q. Do you remember a situation where  
7 Mr. Velarde wanted a system installed in the Lathrop  
8 facility and Ms. Forsythe expressed a concern of the  
9 cost that it was going to -- that Wayfair was going  
10 to incur to change some equipment?  
11 A. Yes, I'm aware of the cost -- the change  
12 order that she was able to provide for delaying the  
13 system installation.  
14 Q. And did you then approve the change that  
15 she was concerned about the cost of?  
16 A. I don't recall I had access at that time to  
17 approve POs. I don't believe I did. I think that  
18 was still going through Matt at the time. I  
19 didn't -- I questioned the value that she was  
20 suggesting. I don't believe we even paid what the  
21 vendor was -- she claimed was asking for that delay.  
22 Q. I'm not -- is this the same issue that  
23 there was -- where she objected that there was going  
24 to be a cost of hundreds of thousands of dollars to  
25 make a change? Are we talking about the same issue?

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1 MR. GOODMAN: I didn't ask a question,  
2 sir. Object to responsiveness.  
3 BY MR. GOODMAN:  
4 Q. Did you have any in-person dealings with  
5 Mr. McDole before Emily was terminated?  
6 MS. KAPPELMAN: Object to the form of  
7 the question.  
8 You can answer, Kory.  
9 A. I just met him one time at a directors'  
10 meeting in Boston. It would have been around my  
11 third week with the company. It was very brief. I  
12 spoke to him for two minutes as we were introducing  
13 ourselves to a number of people. That was the only  
14 time I had met Mike in person.  
15 Q. Have you had any direct interactions with  
16 him since?  
17 A. Yes. We support his site, and we're doing  
18 several million dollars of equipment installation in  
19 his building.  
20 Q. What is your overall assessment of  
21 Mr. McDole based on your dealings with him since  
22 Emily was terminated?  
23 A. He's a site director for the Perris II  
24 building. Seems to be doing a fine job.  
25 Q. Did Mr. Witte ever express concerns

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21 (Pages 78 - 81)

<p>1 about -- his concerns about Mr. McDole's  2 psychological stability to you?</p> <p>3 A. No.</p> <p>4 Q. Who was managing Mr. McDole in September  5 2016?</p> <p>6 A. That was before my time. I don't know.</p> <p>7 Q. Do you know who Glenn Roberts is?</p> <p>8 A. Can you repeat the name?</p> <p>9 Q. Do you know of the name Glenn Roberts?</p> <p>10 A. I do not.</p> <p>11 Q. Kyle Hester?</p> <p>12 A. Yes.</p> <p>13 Q. Who is Kyle Hester?</p> <p>14 A. Kyle Hester is vice president of MHS  15 Global, which is one of the vendors that Wayfair  16 does a lot of MAG business with.</p> <p>17 Q. What is M and G?</p> <p>18 A. MHS. It's the name of the material  19 handling --</p> <p>20 Q. You said M and G business?</p> <p>21 A. No. MAG: material handling equipment.</p> <p>22 Q. Mr. McKnight, are you aware that Mr. McDole  23 made remarks suggesting that he was ready to fight  24 Mr. Hester?</p> <p>25 A. I am not.</p>	<p>1 Q. You don't remember any Slack conversations  2 in which Mr. Witte suggested that somebody should  3 not go to HR?</p> <p>4 A. For what purpose? I need to understand  5 what the content is.</p> <p>6 Does Matt joke on Slack? I'm sure he does.</p> <p>7 But I don't know what you're specifically referring  8 to.</p> <p>9 Q. How is Slack used at Wayfair? Is it on a  10 daily basis?</p> <p>11 A. Slack is one of the primary tools that the  12 teams use to communicate.</p> <p>13 Q. Is it used in preference to an email to  14 communicate with others on your team?</p> <p>15 A. My preference is to talk on the phone.</p> <p>16 Slack is a tool. It's one of many tools.</p> <p>17 It's fast. Faster than waiting for email responses.</p> <p>18 If I need something quicker, I'd call people  19 directly.</p> <p>20 We'll also use text -- text numbers with  21 our cell phones.</p> <p>22 Q. Did you ever observe any horseplay at  23 Wayfair meetings in which one male attempted to --  24 or pretended to try to be kissing another male?</p> <p>25 A. Never.</p>
<p>Page 82</p> <p>1 MS. KAPPELMAN: Bob, do you need a  2 break or anything?</p> <p>3 MR. GOODMAN: I'm going through my  4 notes. I may have some questions.</p> <p>5 MS. KAPPELMAN: Okay.</p> <p>6 BY MR. GOODMAN:</p> <p>7 Q. Have you seen the charges of discrimination  8 which Ms. Forsythe filed?</p> <p>9 A. The only document that I had seen was the  10 one that was published in the Boston Globe.</p> <p>11 Q. Have you been to any Wayfair team dinners  12 where people got drunk?</p> <p>13 A. Where people got work?</p> <p>14 Q. Drunk.</p> <p>15 MS. KAPPELMAN: Drunk. Where people  16 got drunk at a Wayfair dinner.</p> <p>17 A. If they were -- I'm not aware if they were.  18 Possibly. I mean, I don't recall.</p> <p>19 Q. Did Mr. Witte ever contribute to a Slack  20 conversation at Wayfair where he made -- he joked  21 about somebody going to HR?</p> <p>22 MS. KAPPELMAN: Object to the form.</p> <p>23 If you understand that question, Kory,  24 go ahead and answer it.</p> <p>25 A. I don't.</p>	<p>Page 84</p> <p>1 Q. How would you regard that if you observed  2 it at a Wayfair meeting?</p> <p>3 MS. KAPPELMAN: Object to the form of  4 the question. It's a hypothetical question, which  5 is not appropriate for a lay witness.</p> <p>6 But go ahead and answer, Kory.</p> <p>7 A. It depends, I guess. If they're friends  8 and they're joking around, then -- you know, it can  9 be construed as inappropriate. But, I mean, if  10 they're good friends, I mean --</p> <p>11 Q. If they did it in front of female  12 employees, would that be inappropriate?</p> <p>13 A. It's probably not appropriate behavior in  14 general, I would say. It's not professional.</p> <p>15 Q. Did you expect HR to investigate the sexual  16 harassment complaint of Ms. Forsythe fully?</p> <p>17 MS. KAPPELMAN: Object to the form of  18 the question.</p> <p>19 A. Yes.</p> <p>20 Q. Do you know whether they asked her about  21 who she told about the incidents of sexual  22 harassment and when they occurred?</p> <p>23 MS. KAPPELMAN: Do you know -- does he  24 know what HR asked Emily? Is that your question?</p> <p>25 MR. GOODMAN: Yes.</p>

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1 A. No. I was not involved, like I said, at  
 2 all, other than bringing it to HR's attention  
 3 initially.  
 4 Q. But you expected that they would perform a  
 5 comprehensive investigation of the allegations;  
 6 correct?  
 7 A. Yes.  
 8 Q. And that would include verifying the  
 9 allegations of unconsented touching; correct?  
 10 A. Correct.  
 11 MS. KAPPELMAN: Object to the form.  
 12 BY MR. GOODMAN:  
 13 Q. Do you know why they would -- do you  
 14 know -- strike that.  
 15 Is there any reason that they would limit  
 16 the investigation insofar as it dealt with  
 17 unconsented touching?  
 18 A. Bob, he doesn't know. He wasn't involved  
 19 in the investigation.  
 20 Why is this an appropriate question  
 21 for this witness? I'm really waiting for you to tie  
 22 this in. He has testified three times he wasn't  
 23 involved in the investigation. He's not in HR. Why  
 24 are you asking him those questions?  
 25 BY MR. GOODMAN:

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1 question.  
 2 BY MR. GOODMAN:  
 3 Q. Did the training discuss the -- did it  
 4 indicate that investigations would occur if sexual  
 5 harassment allegations were made?  
 6 A. Yes.  
 7 Q. Did it describe any limitations on those  
 8 investigations?  
 9 A. What the training does is it teaches you to  
 10 observe and identify the signs and what the  
 11 necessary steps are to escalate that to the talent  
 12 management team. From that point on, it's up to the  
 13 talent management team to investigate.  
 14 MS. KAPPELMAN: All right, Kory, I bet  
 15 we'll get a question soon.  
 16 MR. GOODMAN: Pass the witness.  
 17 MS. KAPPELMAN: I have nothing  
 18 further. Thank you, Kory, for your time.  
 19 THE WITNESS: Thank you.  
 20 MS. KAPPELMAN: Tomorrow is at 11:00;  
 21 right?  
 22 MR. GOODMAN: Yes.  
 23 THE VIDEOGRAPHER: This concludes the  
 24 deposition. The time is now 5:15, and we're off the  
 25 record.

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1 Q. Sir, do you know any reason why HR would  
 2 not reach out to every witness to alleged  
 3 unconsented touching or witness to complaints about  
 4 alleged unconsented touching?  
 5 MS. KAPPELMAN: I'm going to direct  
 6 him to not answer. He's not an HR expert. He's not  
 7 even an HR representative. He testified he was not  
 8 involved in the investigation.  
 9 If you have more questions for this  
 10 witness based on his personal knowledge, please ask  
 11 them. But please do not ask him questions that are  
 12 not based on his personal knowledge, training, or  
 13 experience.  
 14 BY MR. GOODMAN:  
 15 Q. You had your sexual harassment training.  
 16 We've already talked about that, Mr. McKnight;  
 17 right?  
 18 A. Yes. Provided by Wayfair, yes.  
 19 Q. Did that training talk about investigation  
 20 of sexual harassment allegations?  
 21 MS. KAPPELMAN: How to conduct an  
 22 investigation? Is that your question? Did the  
 23 training tell you how to conduct an investigation?  
 24 Is that the question?  
 25 MR. GOODMAN: No. I'll restate my own

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1 I, Kristen C. Krakofsky, court reporter and  
 2 notary public in and for the Commonwealth of  
 3 Massachusetts, certify:  
 4 That the foregoing proceedings were taken  
 5 before me at the time and place herein set forth, at  
 6 which time the witness was properly identified by  
 7 means of an Illinois driver's license and put under  
 8 oath by me;  
 9 That the testimony of the witness, the  
 10 questions propounded, and all objections and  
 11 statements made at the time of the examination were  
 12 recorded stenographically by me and were thereafter  
 13 transcribed;  
 14 That the foregoing is a true and correct  
 15 transcript of my shorthand notes so taken.  
 16 I further certify that I am not a relative  
 17 or employee of any of the parties, nor am I  
 18 financially interested in the action.  
 19 I declare under penalty of perjury that the  
 20 foregoing is true and correct.  
 21  of August, 2020.  
 22   
 23 Kristen Krakofsky, Notary Public  
 24 My commission expires October 25, 2024.  
 25

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